IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1364 of 2003

with

SPECIAL CIVIL APPLICATION No 11544 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ADANI EXPORTS LIMITED

Versus

ORIENTAL INSURANCE COMPANY LIMITED

Appearance:

1. First Appeal No. 1364 of 2003
   MR AMAR N BHATT for Petitioner No. 1
   MR VISHNU MEHRA WITH MR KK NAIR for Respondent No. 1
2. Special Civil Application No. 11544 of 2003
   MR AMAR N BHATT for Petitioner No. 1
   MR VISHNU MEHRA WITH MR KK NAIR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 15/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

1. The appellant- original plaintiff in this appeal under section 96 of the Civil Procedure Code has challenged the order dated 17.7.2003 passed below Ex. 1 & Ex. 72 filed by the respondent- original defendant in Special Summary Civil Suit No. 42 of 2000. By the said decision, the learned Civil Judge, Senior Division, Gandhidham Kutch has dismissed the suit under Order VII Rule 11 of the Civil Procedure Code.

2. The appellant filed a suit to recover from the respondent an amount of Rs. 52.87 crores with interest at the rate of 18% p.a. thereon for the loss of CD ROMs suffered by the plaintiff as a result of devastating cyclone that hit Kandla Kutch on 9.6.1998. According to the appellant, the respondent is liable to indemnify payment under the Marine Cargo Open Cover No.141503/21/98/002 dated 11.9.1994.

3. The respondent, after obtaining leave to defend the suit, filed written statement at Ex. 23 disputing the plaint of the appellant. It appears that both the parties approached this Court by way of Civil Revision Application No. 554/2001 / Special Civil Application No. 645 of 2003 filed against interim orders passed by the trial court. This Court rejected the said Civil Revision Application by directing the trial court by its order dated 29.11.2002 to dispose of the suit within six months' time. Likewise, the Special Civil Application filed by the respondent was rejected by an order dated 28.1.2003 passed by this Court. Thereafter, the respondent filed application Ex. 72 and praying:

> stay/ adjourn the trial of the suit being Special Civil Suit No. 42 of 2000 on the file of this Hon'ble Court till the conclusion of the investigation into the cases of fraudulent imports and/or exports of CD ROMs by appellant and their other group companies by Directorate of Revenue Intelligence, Ahmedabad.

4. It appears that the appellant submitted his reply

Ex. 77 to the said application wherein the appellant pointed out that the application Ex. 72 was given by the respondent only to delay the proceedings and more particularly the High Court, by its orders dated 29.11.2002 had directed that the suit be disposed of expeditiously and preferably within six months. It further appears that the appellant had also given an application Ex. 73 dated 18.1.2003 for production of documents. On 27.6.2003, the matter was adjourned to 17.7.2003 for hearing of Ex. 72 and 73. On that day, the learned Judge passed order partly allowing application Ex. 72 and simultaneously passed the order of rejection of plaint under Order VII Rule 11 of Civil Procedure Code and of filing all the pending applications in the suit. Surprisingly, the trial court allowed application Ex. 73 filed by the appellant for production of documents, on the very day.

5. As stated above, against the said order dated 17.7.2003 passed below Ex. 72, the appellant has preferred the present appeal.

6. Learned Counsel Mr. S.B.Vakil for the appellant submitted that the impugned order is contrary to law and liable to be set aside inasmuch as it is de hors the written statement Ex. 26 filed by the respondent and the issues framed by the Court and the same is passed without affording the appellant an opportunity of being heard. Learned Counsel further submitted that the appellant was not even called upon to make submissions on the plaint vis-a-vis Order VII Rule 11 of the Civil Procedure Code. In the submission of learned Counsel, the trial court had no occasion while dealing with Ex. 72 to consider the question as to whether the plaint was liable to be rejected under Order VII Rule 11 of Civil Procedure Code.

7. Mr. Vishnu Mehra, learned Counsel appearing for the respondent, on the other hand, asserts that under Order VII Rule 11, the Court can suo motu reject the plaint on the grounds stated in the said rule without there being any application by the defendant. Learned Counsel submitted that in the instant case, the Court has observed that the plaint does not disclose any valid contract and, therefore, the Court was justified in passing the order in question.

8. After considering the rival submissions advanced before us, we feel that it is not necessary for us to examine at this stage the question as to whether the Court was justified in rejecting the plaint by exercising powers under Order VII Rule 11 of the Civil Procedure

Code. This is particularly in view of the fact that the Court was examining application Ex. 72 wherein the respondent had only prayed to stay/ adjourn the trial of the suit till the conclusion of investigation by the Director of Revenue Intelligence. Besides, the respondent has not raised any specific contention in the written statement Ex. 26 vis-a-vis Order VII Rule 11 of CPC and,therefore, obviously no issues have been framed.

9. We do find substance in the submissions advanced on behalf of the appellant, namely that the appellant was not afforded opportunity of being heard on the question of rejection of plaint under Order VII Rule 11 of CPC. On overall consideration of the matter, we do feel that the matter with such a high stake is disposed of in most unusual manner in unnecessary haste. In any case, the trial court is required to take appropriate decision on the application Ex. 72 as to whether the prayer to stay the suit till the investigation initiated by the Director of Revenue Intelligence against the appellant is concluded, is to be allowed or not. As the trial court has not decided the said question, we remand the matter back to trial court to decide Ex.72 afresh in accordance with law.

In the result, the appeal is allowed. The order below Ex.1 and 72 dated 17.7.2003 passed by the learned Civil Judge, Senior Division, Gandhidham- Kutch is set aside. The trial court is directed to take a fresh decision on application Ex. 72 in accordance with law after affording opportunity of hearing to the parties. Without expressing any opinion about the powers of the Court under Order VII Rule 11 of CPC, we simply observe that it will be open for the respondent to make an application for appropriate reliefs under Order VII Rule 11 of CPC. Needless to say that as and when such an application is made, the same shall be considered and decided in accordance with law.

It is not necessary for us to remind the trial court to dispose of the suit expeditiously. The earlier order of this Court is explicit.

In view of the order passed in First Appeal, Special Civil Application stands disposed of accordingly. No order as to costs.

(Kshitij R.Vyas,J.)

(Akshay H.Mehta,J.)

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